

ASSEMBLY BILL

No. 402

Introduced by Assembly Members Plescia and La Suer

February 14, 2003

An act to amend Sections 290 and 311.11 of the Penal Code, relating to child pornography.

LEGISLATIVE COUNSEL'S DIGEST

AB 402, as introduced, Plescia. Child pornography.

Existing law requires certain persons convicted of any specified sexual offense to register with local law enforcement officials, as specified.

This bill would add to the list of persons who are required to register as sex offenders persons who have been convicted of knowingly sending or causing to be sent into the state for sale or distribution, or possessing, preparing, or producing child pornography, as defined. Because this bill would expand the definition of a crime and would require local law enforcement agencies to perform a higher level of service, this bill would impose a state-mandated local program.

Existing law provides that possession of child pornography, as defined, is a public offense punishable by imprisonment in a county jail for a period of up to one year, by a fine of up to \$5000, or by both that fine and imprisonment. Existing law also provides that a second or subsequent conviction under these provisions or a conviction under these provisions by a person who has previously been convicted of other specified provisions regarding child pornography, is a felony punishable by imprisonment in the state prison for 2, 4, or 6 years.

This bill would expand these provisions to provide that any person who commits a second or subsequent offense or who has previously

been convicted of any offense requiring him or her to register as a sex offender, who violates these provisions prohibiting the possession of child pornography, is guilty of a felony.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290 of the Penal Code is amended to
2 read:
3 290. (a) (1) (A) Every person described in paragraph (2),
4 for the rest of his or her life while residing in, or, if he or she has
5 no residence, while located within California, or while attending
6 school or working in California, as described in subparagraph (G),
7 shall be required to register with the chief of police of the city in
8 which he or she is residing, or if he or she has no residence, is
9 located, or the sheriff of the county if he or she is residing, or if he
10 or she has no residence, is located, in an unincorporated area or city
11 that has no police department, and, additionally, with the chief of
12 police of a campus of the University of California, the California
13 State University, or community college if he or she is residing, or
14 if he or she has no residence, is located upon the campus or in any
15 of its facilities, within five working days of coming into, or
16 changing his or her residence or location within, any city, county,
17 or city and county, or campus in which he or she temporarily
18 resides, or, if he or she has no residence, is located.



1 (B) If the person who is registering has more than one residence
2 address or location at which he or she regularly resides or is
3 located, he or she shall register in accordance with subparagraph
4 (A) in each of the jurisdictions in which he or she regularly resides
5 or is located. If all of the addresses or locations are within the same
6 jurisdiction, the person shall provide the registering authority with
7 all of the addresses or locations where he or she regularly resides
8 or is located.

9 (C) If the person who is registering has no residence address,
10 he or she shall update his or her registration no less than once every
11 60 days in addition to the requirement in subparagraph (A), on a
12 form as may be required by the Department of Justice, with the
13 entity or entities described in subparagraph (A) in whose
14 jurisdiction he or she is located at the time he or she is updating the
15 registration.

16 (D) Beginning on his or her first birthday following
17 registration or change of address, the person shall be required to
18 register annually, within five working days of his or her birthday,
19 to update his or her registration with the entities described in
20 subparagraph (A). At the annual update, the person shall provide
21 current information as required on the Department of Justice
22 annual update form, including the information described in
23 subparagraphs (A) to (C), inclusive, of paragraph (2) of
24 subdivision (e).

25 (E) In addition, every person who has ever been adjudicated a
26 sexually violent predator, as defined in Section 6600 of the
27 Welfare and Institutions Code, shall, after his or her release from
28 custody, verify his or her address no less than once every 90 days
29 and place of employment, including the name and address of the
30 employer, in a manner established by the Department of Justice.

31 (F) No entity shall require a person to pay a fee to register or
32 update his or her registration pursuant to this section. The
33 registering agency shall submit registrations, including annual
34 updates or changes of address, directly into the Department of
35 Justice Violent Crime Information Network (VCIN).

36 (G) Persons required to register in their state of residence who
37 are out-of-state residents employed, or carrying on a vocation in
38 California on a full-time or part-time basis, with or without
39 compensation, for more than 14 days, or for an aggregate period
40 exceeding 30 days in a calendar year, shall register in accordance

1 with subparagraph (A). Persons described in paragraph (2) who
2 are out-of-state residents enrolled in any educational institution in
3 California, as defined in Section 22129 of the Education Code, on
4 a full-time or part-time basis, shall register in accordance with
5 subparagraph (A). The place where the out-of-state resident is
6 located, for purposes of registration, shall be the place where the
7 person is employed, carrying on a vocation, or attending school.
8 The out-of-state resident subject to this subparagraph shall, in
9 addition to the information required pursuant to subdivision (e),
10 provide the registering authority with the name of his or her place
11 of employment or the name of the school attended in California,
12 and his or her address or location in his or her state of residence.
13 The registration requirement for persons subject to this
14 subparagraph shall become operative on November 25, 2000. The
15 terms “employed or carries on a vocation” include employment
16 whether or not financially compensated, volunteered, or
17 performed for government or educational benefit.

18 (2) The following persons shall be required to register pursuant
19 to paragraph (1):

20 (A) Any person who, since July 1, 1944, has been or is hereafter
21 convicted in any court in this state or in any federal or military
22 court of a violation of Section 207 or 209 committed with intent
23 to violate Section 261, 286, 288, 288a, or 289, Section 220, except
24 assault to commit mayhem, Section 243.4, paragraph (1), (2), (3),
25 (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of
26 subdivision (a) of Section 262 involving the use of force or
27 violence for which the person is sentenced to the state prison,
28 Section 264.1, 266, 266c, subdivision (b) of Section 266h,
29 subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288,
30 288a, 288.5, or 289, *Section 311.1*, subdivision (b), (c), or (d) of
31 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6,
32 former Section 647a, subdivision (c) of Section 653f, subdivision
33 1 or 2 of Section 314, any offense involving lewd or lascivious
34 conduct under Section 272, or any felony violation of Section
35 288.2; or any person who since that date has been or is hereafter
36 convicted of the attempt to commit any of the above-mentioned
37 offenses.

38 (B) Any person who, since July 1, 1944, has been or hereafter
39 is released, discharged, or paroled from a penal institution where

1 he or she was confined because of the commission or attempted
2 commission of one of the offenses described in subparagraph (A).

3 (C) Any person who, since July 1, 1944, has been or hereafter
4 is determined to be a mentally disordered sex offender under
5 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
6 of Division 6 of the Welfare and Institutions Code or any person
7 who has been found guilty in the guilt phase of a trial for an offense
8 for which registration is required by this section but who has been
9 found not guilty by reason of insanity in the sanity phase of the
10 trial.

11 (D) Any person who, since July 1, 1944, has been, or is
12 hereafter convicted in any other court, including any state, federal,
13 or military court, of any offense that, if committed or attempted in
14 this state, would have been punishable as one or more of the
15 offenses described in subparagraph (A) or any person ordered by
16 any other court, including any state, federal, or military court, to
17 register as a sex offender for any offense, if the court found at the
18 time of conviction or sentencing that the person committed the
19 offense as a result of sexual compulsion or for purposes of sexual
20 gratification.

21 (E) Any person ordered by any court to register pursuant to this
22 section for any offense not included specifically in this section if
23 the court finds at the time of conviction or sentencing that the
24 person committed the offense as a result of sexual compulsion or
25 for purposes of sexual gratification. The court shall state on the
26 record the reasons for its findings and the reasons for requiring
27 registration.

28 (F) (i) Notwithstanding any other subdivision, a person who
29 was convicted before January 1, 1976, under subdivision (a) of
30 Section 286, or Section 288a, shall not be required to register
31 pursuant to this section for that conviction if the conviction was for
32 conduct between consenting adults that was decriminalized by
33 Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes
34 of 1976. The Department of Justice shall remove that person from
35 the Sex Offender Registry, and the person is discharged from his
36 or her duty to register pursuant to the following procedure:

37 (I) The person submits to the Department of Justice official
38 documentary evidence, including court records or police reports,
39 that demonstrate that the person's conviction pursuant to either of

1 those sections was for conduct between consenting adults that was
2 decriminalized; or

3 (II) The person submits to the department a declaration stating
4 that the person's conviction pursuant to either of those sections was
5 for consensual conduct between adults that has been
6 decriminalized. The declaration shall be confidential and not a
7 public record, and shall include the person's name, address,
8 telephone number, date of birth, and a summary of the
9 circumstances leading to the conviction, including the date of the
10 conviction and county of the occurrence.

11 (III) The department shall determine whether the person's
12 conviction was for conduct between consensual adults that has
13 been decriminalized. If the conviction was for consensual conduct
14 between adults that has been decriminalized, and the person has no
15 other offenses for which he or she is required to register pursuant
16 to this section, the department shall, within 60 days of receipt of
17 those documents, notify the person that he or she is relieved of the
18 duty to register, and shall notify the local law enforcement agency
19 with which the person is registered that he or she has been relieved
20 of the duty to register. The local law enforcement agency shall
21 remove the person's registration from its files within 30 days of
22 receipt of notification. If the documentary or other evidence
23 submitted is insufficient to establish the person's claim, the
24 department shall, within 60 days of receipt of those documents,
25 notify the person that his or her claim cannot be established, and
26 that the person shall continue to register pursuant to this section.
27 The department shall provide, upon the person's request, any
28 information relied upon by the department in making its
29 determination that the person shall continue to register pursuant to
30 this section. Any person whose claim has been denied by the
31 department pursuant to this clause may petition the court to appeal
32 the department's denial of the person's claim.

33 (ii) On or before July 1, 1998, the department shall make a
34 report to the Legislature concerning the status of persons who may
35 come under the provisions of this subparagraph, including the
36 number of persons who were convicted before January 1, 1976,
37 under subdivision (a) of Section 286 or Section 288a and are
38 required to register under this section, the average age of these
39 persons, the number of these persons who have any subsequent
40 convictions for a registerable sex offense, and the number of these

1 persons who have sought successfully or unsuccessfully to be
2 relieved of their duty to register under this section.

3 (b) (1) Any person who is released, discharged, or paroled
4 from a jail, state or federal prison, school, road camp, or other
5 institution where he or she was confined because of the
6 commission or attempted commission of one of the offenses
7 specified in subdivision (a) or is released from a state hospital to
8 which he or she was committed as a mentally disordered sex
9 offender under Article 1 (commencing with Section 6300) of
10 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
11 Code, shall, prior to discharge, parole, or release, be informed of
12 his or her duty to register under this section by the official in charge
13 of the place of confinement or hospital, and the official shall
14 require the person to read and sign any form that may be required
15 by the Department of Justice, stating that the duty of the person to
16 register under this section has been explained to the person. The
17 official in charge of the place of confinement or hospital shall
18 obtain the address where the person expects to reside upon his or
19 her discharge, parole, or release and shall report the address to the
20 Department of Justice. The official shall at the same time forward
21 a current photograph of the person to the Department of Justice.

22 (2) The official in charge of the place of confinement or
23 hospital shall give one copy of the form to the person and shall send
24 one copy to the Department of Justice and one copy to the
25 appropriate law enforcement agency or agencies having
26 jurisdiction over the place the person expects to reside upon
27 discharge, parole, or release. If the conviction that makes the
28 person subject to this section is a felony conviction, the official in
29 charge shall, not later than 45 days prior to the scheduled release
30 of the person, send one copy to the appropriate law enforcement
31 agency or agencies having local jurisdiction where the person
32 expects to reside upon discharge, parole, or release; one copy to the
33 prosecuting agency that prosecuted the person; and one copy to the
34 Department of Justice. The official in charge of the place of
35 confinement or hospital shall retain one copy.

36 (c) (1) Any person who is convicted in this state of the
37 commission or attempted commission of any of the offenses
38 specified in subdivision (a) and who is released on probation, shall,
39 prior to release or discharge, be informed of the duty to register
40 under this section by the probation department, and a probation

1 officer shall require the person to read and sign any form that may
2 be required by the Department of Justice, stating that the duty of
3 the person to register under this section has been explained to him
4 or her. The probation officer shall obtain the address where the
5 person expects to reside upon release or discharge and shall report
6 within three days the address to the Department of Justice. The
7 probation officer shall give one copy of the form to the person,
8 send one copy to the Department of Justice, and forward one copy
9 to the appropriate law enforcement agency or agencies having
10 local jurisdiction where the person expects to reside upon his or her
11 discharge, parole, or release.

12 (2) Any person who is convicted in this state of the commission
13 or attempted commission of any of the offenses specified in
14 subdivision (a) and who is granted conditional release without
15 supervised probation, or discharged upon payment of a fine, shall,
16 prior to release or discharge, be informed of the duty to register
17 under this section in open court by the court in which the person
18 has been convicted, and the court shall require the person to read
19 and sign any form that may be required by the Department of
20 Justice, stating that the duty of the person to register under this
21 section has been explained to him or her. If the court finds that it
22 is in the interest of the efficiency of the court, the court may assign
23 the bailiff to require the person to read and sign forms under this
24 section. The court shall obtain the address where the person
25 expects to reside upon release or discharge and shall report within
26 three days the address to the Department of Justice. The court shall
27 give one copy of the form to the person, send one copy to the
28 Department of Justice, and forward one copy to the appropriate
29 law enforcement agency or agencies having local jurisdiction
30 where the person expects to reside upon his or her discharge,
31 parole, or release.

32 (d) (1) Any person who, on or after January 1, 1986, is
33 discharged or paroled from the Department of the Youth Authority
34 to the custody of which he or she was committed after having been
35 adjudicated a ward of the juvenile court pursuant to Section 602
36 of the Welfare and Institutions Code because of the commission or
37 attempted commission of any offense described in paragraph (3)
38 shall be subject to registration under the procedures of this section.

39 (2) Any person who is discharged or paroled from a facility in
40 another state that is equivalent to the Department of the Youth

1 Authority, to the custody of which he or she was committed
2 because of an offense which, if committed or attempted in this
3 state, would have been punishable as one or more of the offenses
4 described in paragraph (3), shall be subject to registration under
5 the procedures of this section.

6 (3) Any person described in this subdivision who committed an
7 offense in violation of any of the following provisions shall be
8 required to register pursuant to this section:

9 (A) Assault with intent to commit rape, sodomy, oral
10 copulation, or any violation of Section 264.1, 288, or 289 under
11 Section 220.

12 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of
13 subdivision (a) of Section 261, Section 264.1, 266c, or 267,
14 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,
15 Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b)
16 of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of
17 Section 289, or Section 647.6.

18 (C) A violation of Section 207 or 209 committed with the intent
19 to violate Section 261, 286, 288, 288a, or 289.

20 (4) Prior to discharge or parole from the Department of the
21 Youth Authority, any person who is subject to registration under
22 this subdivision shall be informed of the duty to register under the
23 procedures set forth in this section. Department of the Youth
24 Authority officials shall transmit the required forms and
25 information to the Department of Justice.

26 (5) All records specifically relating to the registration in the
27 custody of the Department of Justice, law enforcement agencies,
28 and other agencies or public officials shall be destroyed when the
29 person who is required to register has his or her records sealed
30 under the procedures set forth in Section 781 of the Welfare and
31 Institutions Code. This subdivision shall not be construed as
32 requiring the destruction of other criminal offender or juvenile
33 records relating to the case that are maintained by the Department
34 of Justice, law enforcement agencies, the juvenile court, or other
35 agencies and public officials unless ordered by a court under
36 Section 781 of the Welfare and Institutions Code.

37 (e) (1) On or after January 1, 1998, upon incarceration,
38 placement, or commitment, or prior to release on probation, any
39 person who is required to register under this section shall
40 preregister. The preregistering official shall be the admitting

1 officer at the place of incarceration, placement, or commitment, or
2 the probation officer if the person is to be released on probation.

3 The preregistration shall consist of both of the following:

4 (A) A preregistration statement in writing, signed by the
5 person, giving information that shall be required by the
6 Department of Justice.

7 (B) The fingerprints and a current photograph of the person.

8 (C) Any person who is preregistered pursuant to this
9 subdivision is required to be preregistered only once.

10 (2) A person described in paragraph (2) of subdivision (a) shall
11 register, or reregister if the person has previously registered, upon
12 release from incarceration, placement, or commitment, pursuant
13 to paragraph (1) of subdivision (a). The registration shall consist
14 of all of the following:

15 (A) A statement in writing signed by the person, giving
16 information as shall be required by the Department of Justice and
17 giving the name and address of the person's employer, and the
18 address of the person's place of employment if that is different
19 from the employer's main address.

20 (B) The fingerprints and a current photograph of the person
21 taken by the registering official.

22 (C) The license plate number of any vehicle owned by,
23 regularly driven by, or registered in the name of the person.

24 (D) Notice to the person that, in addition to the requirements of
25 paragraph (4), he or she may have a duty to register in any other
26 state where he or she may relocate.

27 (E) Copies of adequate proof of residence, which shall be
28 limited to a California driver's license, California identification
29 card, recent rent or utility receipt, printed personalized checks or
30 other recent banking documents showing that person's name and
31 address, or any other information that the registering official
32 believes is reliable. If the person has no residence and no
33 reasonable expectation of obtaining a residence in the foreseeable
34 future, the person shall so advise the registering official and shall
35 sign a statement provided by the registering official stating that
36 fact. Upon presentation of proof of residence to the registering
37 official or a signed statement that the person has no residence, the
38 person shall be allowed to register. If the person claims that he or
39 she has a residence but does not have any proof of residence, he or



1 she shall be allowed to register but shall furnish proof of residence
2 within 30 days of the day he or she is allowed to register.

3 (3) Within three days thereafter, the preregistering official or
4 the registering law enforcement agency or agencies shall forward
5 the statement, fingerprints, photograph, and vehicle license plate
6 number, if any, to the Department of Justice.

7 (f) (1) If any person who is required to register pursuant to this
8 section changes his or her residence address or location, whether
9 within the jurisdiction in which he or she is currently registered or
10 to a new jurisdiction inside or outside the state, the person shall
11 inform, in writing within five working days, the law enforcement
12 agency or agencies with which he or she last registered of the new
13 address or location. The law enforcement agency or agencies shall,
14 within three days after receipt of this information, forward a copy
15 of the change of address or location information to the Department
16 of Justice. The Department of Justice shall forward appropriate
17 registration data to the law enforcement agency or agencies having
18 local jurisdiction of the new place of residence or location.

19 (2) If the person's new address is in a Department of the Youth
20 Authority facility or a state prison or state mental institution, an
21 official of the place of incarceration, placement, or commitment
22 shall, within 90 days of receipt of the person, forward the
23 registrant's change of address information to the Department of
24 Justice. The agency need not provide a physical address for the
25 registrant but shall indicate that he or she is serving a period of
26 incarceration or commitment in a facility under the agency's
27 jurisdiction. This paragraph shall apply to persons received in a
28 Department of the Youth Authority facility or a state prison or state
29 mental institution on or after January 1, 1999. The Department of
30 Justice shall forward the change of address information to the
31 agency with which the person last registered.

32 (3) If any person who is required to register pursuant to this
33 section changes his or her name, the person shall inform, in person,
34 the law enforcement agency or agencies with which he or she is
35 currently registered within five working days. The law
36 enforcement agency or agencies shall forward a copy of this
37 information to the Department of Justice within three days of its
38 receipt.

39 (g) (1) Any person who is required to register under this
40 section based on a misdemeanor conviction or juvenile

1 adjudication who willfully violates any requirement of this section
2 is guilty of a misdemeanor punishable by imprisonment in a
3 county jail not exceeding one year.

4 (2) Except as provided in paragraphs (5) and (7), any person
5 who is required to register under this section based on a felony
6 conviction or juvenile adjudication who willfully violates any
7 requirement of this section or who has a prior conviction or
8 juvenile adjudication for the offense of failing to register under this
9 section and who subsequently and willfully violates any
10 requirement of this section is guilty of a felony and shall be
11 punished by imprisonment in the state prison for 16 months, or two
12 or three years.

13 If probation is granted or if the imposition or execution of
14 sentence is suspended, it shall be a condition of the probation or
15 suspension that the person serve at least 90 days in a county jail.
16 The penalty described in this paragraph shall apply whether or not
17 the person has been released on parole or has been discharged from
18 parole.

19 (3) Any person determined to be a mentally disordered sex
20 offender or who has been found guilty in the guilt phase of trial for
21 an offense for which registration is required under this section, but
22 who has been found not guilty by reason of insanity in the sanity
23 phase of the trial, or who has had a petition sustained in a juvenile
24 adjudication for an offense for which registration is required under
25 this section pursuant to subdivision (d), but who has been found
26 not guilty by reason of insanity, who willfully violates any
27 requirement of this section is guilty of a misdemeanor and shall be
28 punished by imprisonment in a county jail not exceeding one year.
29 For any second or subsequent willful violation of any requirement
30 of this section, the person is guilty of a felony and shall be punished
31 by imprisonment in the state prison for 16 months, or two or three
32 years.

33 (4) If, after discharge from parole, the person is convicted of a
34 felony or suffers a juvenile adjudication as specified in this
35 subdivision, he or she shall be required to complete parole of at
36 least one year, in addition to any other punishment imposed under
37 this subdivision. A person convicted of a felony as specified in this
38 subdivision may be granted probation only in the unusual case
39 where the interests of justice would best be served. When
40 probation is granted under this paragraph, the court shall specify

on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, “parole authority” has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any



1 person other than a regularly employed peace officer or other law
2 enforcement officer.

3 (j) In any case in which a person who would be required to
4 register pursuant to this section for a felony conviction is to be
5 temporarily sent outside the institution where he or she is confined
6 on any assignment within a city or county including firefighting,
7 disaster control, or of whatever nature the assignment may be, the
8 local law enforcement agency having jurisdiction over the place
9 or places where the assignment shall occur shall be notified within
10 a reasonable time prior to removal from the institution. This
11 subdivision shall not apply to any person who is temporarily
12 released under guard from the institution where he or she is
13 confined.

14 (k) As used in this section, “mentally disordered sex offender”
15 includes any person who has been determined to be a sexual
16 psychopath or a mentally disordered sex offender under any
17 provision which, on or before January 1, 1976, was contained in
18 Division 6 (commencing with Section 6000) of the Welfare and
19 Institutions Code.

20 (l) (1) Every person who, prior to January 1, 1997, is required
21 to register under this section, shall be notified whenever he or she
22 next reregisters of the reduction of the registration period from 14
23 to five working days. This notice shall be provided in writing by
24 the registering agency or agencies. Failure to receive this
25 notification shall be a defense against the penalties prescribed by
26 subdivision (g) if the person did register within 14 days.

27 (2) Every person who, as a sexually violent predator, as defined
28 in Section 6600 of the Welfare and Institutions Code, is required
29 to verify his or her registration every 90 days, shall be notified
30 wherever he or she next registers of his or her increased
31 registration obligations. This notice shall be provided in writing by
32 the registering agency or agencies. Failure to receive this notice
33 shall be a defense against the penalties prescribed by paragraph (5)
34 of subdivision (g).

35 (m) (1) When a peace officer reasonably suspects, based on
36 information that has come to his or her attention through
37 information provided by any peace officer or member of the
38 public, that a child or other person may be at risk from a sex
39 offender convicted of a crime listed in paragraph (1) of subdivision
40 (a) of Section 290.4, a law enforcement agency may,

1 notwithstanding any other provision of law, provide any of the
2 information specified in paragraph (4) of this subdivision about
3 that registered sex offender that the agency deems relevant and
4 necessary to protect the public, to the following persons, agencies,
5 or organizations the offender is likely to encounter, including, but
6 not limited to, the following:

7 (A) Public and private educational institutions, day care
8 establishments, and establishments and organizations that
9 primarily serve individuals likely to be victimized by the offender.

10 (B) Other community members at risk.

11 (2) The law enforcement agency may authorize persons and
12 entities who receive the information pursuant to paragraph (1) to
13 disclose information to additional persons only if the agency does
14 the following:

15 (A) Determines that all conditions set forth in paragraph (1)
16 have been satisfied regarding disclosure to the additional persons.

17 (B) Identifies the appropriate scope of further disclosure.

18 (3) Persons notified pursuant to paragraph (1) may disclose the
19 information provided by the law enforcement agency in the
20 manner and to the extent authorized by the law enforcement
21 agency.

22 (4) The information that may be disclosed pursuant to this
23 section includes the following:

24 (A) The offender's full name.

25 (B) The offender's known aliases.

26 (C) The offender's gender.

27 (D) The offender's race.

28 (E) The offender's physical description.

29 (F) The offender's photograph.

30 (G) The offender's date of birth.

31 (H) Crimes resulting in registration under this section.

32 (I) The offender's address, which must be verified prior to
33 publication.

34 (J) Description and license plate number of offender's vehicles
35 or vehicles the offender is known to drive.

36 (K) Type of victim targeted by the offender.

37 (L) Relevant parole or probation conditions, such as one
38 prohibiting contact with children.

39 (M) Dates of crimes resulting in classification under this
40 section.

1 (N) Date of release from confinement.

2 (O) The offender's enrollment, employment, or vocational
3 status with any university, college, community college, or other
4 institution of higher learning.

5 However, information disclosed pursuant to this subdivision
6 shall not include information that would identify the victim.

7 (5) If a law enforcement agency discloses information pursuant
8 to this subdivision, it shall include, with the disclosure, a statement
9 that the purpose of the release of the information is to allow
10 members of the public to protect themselves and their children
11 from sex offenders.

12 (6) For purposes of this section, "likely to encounter" means
13 both of the following:

14 (A) That the agencies, organizations, or other community
15 members are in a location or in close proximity to a location where
16 the offender lives or is employed, or that the offender visits or is
17 likely to visit on a regular basis.

18 (B) The types of interaction that ordinarily occur at that
19 location and other circumstances indicate that contact with the
20 offender is reasonably probable.

21 (7) For purposes of this section, "reasonably suspects" means
22 that it is objectively reasonable for a peace officer to entertain a
23 suspicion, based upon facts that could cause a reasonable person
24 in a like position, drawing when appropriate on his or her training
25 and experience, to suspect that a child or other person is at risk.

26 (8) For purposes of this section, "at risk" means a person is or
27 may be exposed to a risk of becoming a victim of a sex offense
28 committed by the offender.

29 (9) A law enforcement agency may continue to disclose
30 information on an offender under this subdivision for as long as the
31 offender is included in Section 290.4.

32 (n) In addition to the procedures set forth elsewhere in this
33 section, a designated law enforcement entity may advise the public
34 of the presence of high-risk sex offenders in its community
35 pursuant to this subdivision.

36 (1) For purposes of this subdivision:

37 (A) A high-risk sex offender is a person who has been
38 convicted of an offense specified in paragraph (1) of subdivision
39 (a) of Section 290.4, and also meets one of the following criteria:



1 (i) Has been convicted of three or more violent sex offenses, at
2 least two of which were brought and tried separately.

3 (ii) Has been convicted of two violent sex offenses and one or
4 more violent nonsex offenses, at least two of which were brought
5 and tried separately.

6 (iii) Has been convicted of one violent sex offense and two or
7 more violent nonsex offenses, at least two of which were brought
8 and tried separately.

9 (iv) Has been convicted of either two violent sex offenses or
10 one violent sex offense and one violent nonsex offense, at least two
11 of which were brought and tried separately, and has been arrested
12 on separate occasions for three or more violent sex offenses,
13 violent nonsex offenses, or associated offenses.

14 (v) Has been adjudicated a sexually violent predator pursuant
15 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
16 2 of Division 6 of the Welfare and Institutions Code.

17 (B) A violent sex offense means any offense defined in Section
18 220, except attempt to commit mayhem, or Section 261, 264.1,
19 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily
20 injury during the commission of a sex offense, as provided in
21 Section 12022.8.

22 (C) A violent nonsex offense means any offense defined in
23 Section 187, subdivision (a) of Section 192, or Section 203, 206,
24 207, or 236, provided that the offense is a felony, subdivision (a)
25 of Section 273a, Section 273d or 451, or attempted murder, as
26 defined in Sections 187 and 664.

27 (D) An associated offense means any offense defined in
28 Section 243.4, provided that the offense is a felony, Section 311.1,
29 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459,
30 provided the offense is of the first degree, Section 597 or 646.9,
31 subdivision (d), (h), or (i) of Section 647, Section 653m, or
32 infliction of great bodily injury during the commission of a felony,
33 as defined in Section 12022.7.

34 (E) For purposes of subparagraphs (B) to (D), inclusive, an
35 arrest or conviction for the statutory predecessor of any of the
36 enumerated offenses, or an arrest or conviction in any other
37 jurisdiction for any offense that, if committed or attempted in this
38 state, would have been punishable as one or more of the offenses
39 described in those subparagraphs, is to be considered in
40 determining whether an offender is a high-risk sex offender.



(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Designated law enforcement entity" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any campus of the University of California, California State University, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each

year, the department shall provide to each chief of police and sheriff in the state, and to any other designated law enforcement entity upon request, the following information regarding each identified high-risk sex offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any designated law enforcement entity to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the offender's vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(4) Notwithstanding any other provision of law, any person described in paragraph (2) of subdivision (p) who receives information from a designated law enforcement entity pursuant to paragraph (3) may disclose that information in the manner and to the extent authorized by the law enforcement entity.

(5) The law enforcement agency may authorize persons and entities who receive the information pursuant to paragraph (3) to disclose information to additional persons only if the agency does the following:

(A) Determines that all conditions set forth in this subdivision have been satisfied regarding disclosure to the additional persons.

(B) Identifies the appropriate scope of further disclosure.

(o) Agencies disseminating information to the public pursuant to Section 290.4 shall maintain records of those persons requesting to view the CD-ROM or other electronic media for a minimum of five years. Agencies disseminating information to the public pursuant to subdivision (n) shall maintain records of the means and dates of dissemination for a minimum of five years.

(p) (1) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good

1 faith conduct under this section. For the purposes of this section,
2 “law enforcement agency” means the Attorney General of
3 California, every district attorney, the Department of Corrections,
4 the Department of the Youth Authority, and every state or local
5 agency expressly authorized by statute to investigate or prosecute
6 law violators.

7 (2) Any public or private educational institution, day care
8 facility, or any child care custodian described in Section 11165.7,
9 or any employee of a public or private educational institution or
10 day care facility which in good faith disseminates information as
11 authorized pursuant to paragraph (3) of subdivision (m) or
12 paragraph (4) of subdivision (n) that is provided by a law
13 enforcement agency or an employee of a law enforcement agency
14 shall be immune from civil liability.

15 (q) (1) Any person who uses information disclosed pursuant to
16 this section to commit a felony shall be punished, in addition and
17 consecutive to any other punishment, by a five-year term of
18 imprisonment in the state prison.

19 (2) Any person who uses information disclosed pursuant to this
20 section to commit a misdemeanor shall be subject to, in addition
21 to any other penalty or fine imposed, a fine of not less than five
22 hundred dollars (\$500) and not more than one thousand dollars
23 (\$1,000).

24 (r) The registration and public notification provisions of this
25 section are applicable to every person described in this section,
26 without regard to when his or her crimes were committed or his or
27 her duty to register pursuant to this section arose, and to every
28 offense described in this section, regardless of when it was
29 committed.

30 SEC. 2. Section 311.11 of the Penal Code is amended to read:

31 311.11. (a) Every person who knowingly possesses or
32 controls any matter, representation of information, data, or image,
33 including, but not limited to, any film, filmstrip, photograph,
34 negative, slide, photocopy, videotape, video laser disc, computer
35 hardware, computer software, computer floppy disc, data storage
36 media, CD-ROM, or computer-generated equipment or any other
37 computer-generated image that contains or incorporates in any
38 manner, any film or filmstrip, the production of which involves the
39 use of a person under the age of 18 years, knowing that the matter
40 depicts a person under the age of 18 years personally engaging in

1 or simulating sexual conduct, as defined in subdivision (d) of
2 Section 311.4, is guilty of a public offense and shall be punished
3 by imprisonment in the county jail for up to one year, or by a fine
4 not exceeding two thousand five hundred dollars (\$2,500), or by
5 both the fine and imprisonment.

6 (b) If a person has been previously convicted of a violation of
7 this section, ~~or of a violation of subdivision (b) of Section 311.2,~~
8 ~~or subdivision (b) of Section 311.4,~~ *or any other offense listed in*
9 *paragraph (2) of subdivision (a) of Section 290*, he or she is guilty
10 of a felony and shall be punished by imprisonment for two, four,
11 or six years.

12 (c) It is not necessary to prove that the matter is obscene in order
13 to establish a violation of this section.

14 (d) This section does not apply to drawings, figurines, statues,
15 or any film rated by the Motion Picture Association of America,
16 nor does it apply to live or recorded telephone messages when
17 transmitted, disseminated, or distributed as part of a commercial
18 transaction.

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution for
21 certain costs that may be incurred by a local agency or school
22 district because in that regard this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.

28 However, notwithstanding Section 17610 of the Government
29 Code, if the Commission on State Mandates determines that this
30 act contains other costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million dollars
35 (\$1,000,000), reimbursement shall be made from the State
36 Mandates Claims Fund.

